IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12834 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARSHOTTAMBHAI KUBERBHAI MAKWANA & 3 - Petitioner(s)
Versus
STATE OF GUJARAT, THROUGH SECRETARY & 2 - Respondent(s)

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Appearance :
MR JV BHAIRAVIA for Petitioner(s) : 1 - 4.
MR MR MENGDEY, AGP for Respondent(s) : 1 - 2.
MR PF MAKWANA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/02/2007

ORAL JUDGMENT

In the present petition, the petitioners have challenged a Government notification dated 29th July

1999 by which the Government in purported exercise of powers under section 161 of the Gujarat Cooperative Societies Act (hereinafter to be referred to as “the said Act”) exempted respondent No.3 Society from the provisions of section 36(1) of the said Act for a period upto 29th September 1995.

2. Facts leading to the petition are as follows:-

The petitioners are members of respondent No.3 Cooperative society (hereinafter to be referred to as respondent No.3 society). On account of certain dispute between the petitioners and some of the members of respondent No.3 society, respondent No.3 desired to expel the petitioners from the membership of the said society. Earlier attempt on the part of respondent No.3 society in expelling the petitioners failed. Since they had not followed the procedure laid down under law in particular under section 36 of the said Act, their action was set aside by the State Authorities. Respondent No.3 society, therefore approached this Court by filing Special Civil

Application No.12295 of 1994. The said petition came to be dismissed as withdrawn by order dated 27.10.94.

3. Having thus failed to secure expulsion of the petitioners from the membership of respondent No.3 Society, a fresh attempt was made to give a legal gloss to the attempt. It is stated that after the withdrawal of the petition, respondent No.3 society called a general meeting with a specific agenda of expulsion of the petitioners from the membership of respondent No.3 society. However, since resolution was not passed by the requisite majority of three-fourth as provided under section 36 of the said Act, the attempt to expel them again failed.

4. It appears that respondent No.3 society thereafter approached the State Government and succeeded in convincing the State Government into passing the impugned notification granting exemption to the society from the provisions of section 36(1) of the said Act. Significantly, such exemption was granted with retrospective effect and was to enure

till 29th September, 1995.

It can thus be seen that admittedly, the only purpose for issuing the notification was to legalize the expulsion of the petitioners when respondent No.3 society had not followed the procedure laid down under section 36(1) of the said Act.

5. Having heard the learned advocates appearing for the parties, I am unable to uphold the impugned notification. It is true that under section 161 of the said act, the State Government gets sufficiently wide powers to exempt any society or class of societies from any of the provisions of the said Act. Such powers are hedged with the requirement that exercise of power must be for the purpose of furtherance of the provisions of the said Act and not for frustrating such provisions. This Court in a judgment dated 4th September, 2006 passed in Special Civil Application No.1870 of 2006 and connected matters after taking into account various decisions on the point rendered by different courts including

Gujarat High Court, made following observations:

> “65. Similarly, I am also not able to uphold the contention of the learned advocate Shri HP Raval that section 161 of the said Act gives unlimited power to the Government to exempt any society or class of societies from any of the provisions of the Act. Such unlimited, unbridled or unguided powers would be contrary to the scheme of the Act and would expose the provision to the vice of irrationality. Even otherwise, it is by now well settled in number of decisions, as noted hereinabove, powers under section 161 of the said Act can be exercised by the Government only for the purpose of furtherance of and for achieving the objects of the Act and not contrary to the same. Accepting the contention of learned advocate Shri Raval for the intervenors would amount to giving unlimited, unguided and unchecked powers to the Government to even grant exemption with respect to the basic principles of cooperation, which in my opinion, is simply not permissible. Such contention is also contrary to observations made by Division Bench in case of Joshi Indulal Vallabhram v. State of Gujarat (supra).”

In the present case, ex-facie, the notification has been issued for the purpose of regularizing the expulsion of the petitioners from the membership of respondent No.3 Society without having to follow the provisions contained in section 36(1) of the Act. No special reasons have been brought on record to suggest that such exemption was inevitable or imminent nor the respondents have filed affidavit in reply though the petition was admitted in the year

2000 and stay almost in the nature of mandatory injunction was granted in favour of the petitioners.

Though learned advocate Shri Makwana for respondent No.2 has requested for time for filing reply, the same was turned down at the outset, since the petition is pending last seven years and has been notified before this Court on numerous occasions in the recent past itself and earlier no such request was made. In fact, no appearance was put up on behalf of respondent No.3 society earlier.

6. Without the reply, a faint effort was made on behalf of respondent No.3 Society to support the Government notification by contending that the petitioners were creating hurdles in the smooth functioning of respondent No.3 society which necessitated that they be expelled even without the aid of three-fourth majority. There is no material on record for this Court to uphold such averments.

7. The State Government has also not produced any material to justify the exercise such extra-ordinary powers in case of an individual society, that too, with retrospective effect for a limited period.

Powers under section 161 of the said Act are certainly not meant for being exercised without proper justification.

8. Considering all these aspects of the matter, I have no hesitation in striking down the notification under challenge. Accordingly, notification at Annexure A is quashed. The petition is allowed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)